IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Misc. Application No. 743 of 2005

Rakesh Kumar, s/o Prem Chand
R/o Syamali, Tanki Colony
PS. Syamali, District Muzzafarnagar.

Applicant

versus

1. State of Uttaranchal.
2. Sri Ram Kishan, s/oHet Ram,
R/o H. No. 17/2 Syamali
P.S. Nauchandi. District Meerut. Opposite Party.

Hon'ble B.C. Kandpal, J.

This petition under Section 482 Cr.PC has been filed by the applicant who is facing trial before the court below under Section 302 IPC.

The petitioner has challenged the order dated 6.10.2005 passed by the learned Sessions Judge, Haridwar by way of this petition.

Brief facts of the case giving rise to this petition are that opposite party No. 2, Ram Kishan lodged a First Information Report against the applicant and two other persons under Sections 302, 120B and 506 IPC. The case was committed to the court of sessions Judge and during the sessions trial, the prosecution witnesses were examined.

The applicant who is the accused in the case appeared before the trial court and moved an application that the prosecution witness No.2 Narendra and prosecution witness No.3 Mehar Pal whose depositions have been recorded before the court should be recalled for further cross examination.

This application was considered by the trial court and the learned Sessions Judge rejected the application of the petitioner vide order dated 6.10.2005.

Feeling aggrieved by the aforesaid impugned order, this petition has been filed by the petitioner.

I have heard Sh. K.S. Verma, learned counsel for the petitioner, learned AGA and perused the record.

The learned counsel for the petitioner has argued that a person can be recalled for re-examination under Section 311 Cr. P.C. at any stage of the case, therefore, in case if the accused wanted to cross examination of the prosecution witnesses, the trial court should have given an opportunity to him for the same.

I failed to appreciate the arguments advanced by the learned counsel for the petitioner. The application moved by the petitioner before the court below nowhere indicates as to on which points further examination has become essential. The learned trial court has categorically observed in the impugned order that the prosecution witnesses were thoroughly examined and the accused was given complete and full opportunity to cross examine the witnesses .Unless the accused would show before the trial court that which is the material point which has been left in the cross examination and has further become essential to be put to the witnesses, the application filed by the accused could not have been allowed.

The trial court has rightly rejected the application and to my mind also there is no ground to interfere in the impugned order dated 6.10.2005 passed by the trial court.

I do not find any flagrant injustice caused to the petitioner and abuse of prosess of the court.

The petition under Section 482 Cr.P.C. lacks merit and is liable to be dismissed.

Accordingly the petition is dismissed in limine.

(B.C.Kandpal, J)

26.10.2005
nbj